

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW ROLEY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

GOOGLE, LLC,

Defendant.

Case No. 5:18-cv-7537-BLF

**PROPOSED STIPULATED  
PROTECTIVE ORDER ~~FOR~~  
STANDARD LITIGATION**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the ~~parties~~Parties hereby stipulate to and petition the ~~court~~Court to enter the following Stipulated Protective Order. The ~~parties~~Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The ~~parties~~Parties further acknowledge, as set forth in Section ~~12.3~~14.5, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a ~~party~~Party seeks permission from the ~~court~~Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

1           2.2     ~~“CONFIDENTIAL”~~ Information or Items: information (regardless of how it is  
2 generated, stored or maintained) or tangible things that qualify for protection under Federal  
3 Rule of Civil Procedure 26(c).

4           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
5 well as their support staff).

6           2.4     ~~OMITTED~~

7           ~~2.4~~2.5 Designating Party: a Party or Non-Party that designates information or items that  
8 it produces in disclosures or in responses to discovery as “CONFIDENTIAL-” or “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

10          ~~2.5~~2.6 Disclosure or Discovery Material: all items or information, regardless of the  
11 medium or manner in which it is generated, stored, or maintained (including, among other  
12 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
13 or responses to discovery in this matter.

14          ~~2.6~~2.7 Expert: a person with specialized knowledge or experience in a matter pertinent  
15 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
16 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
17 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
18 or of a Party’s competitor.

19          2.8     ~~“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”~~ Information or  
20 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
21 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
22 less restrictive means.

23          2.10    House Counsel: attorneys who are members in good standing of at least one  
24 ~~2.7 House Counsel:- attorneys~~state bar, who are employees of a party to Party, and who have  
25 responsibility for managing this action. House Counsel does not include Outside Counsel of  
26 Record or any other outside counsel.

27          ~~2.8~~2.11    Non-Party: any natural person, partnership, corporation, association, or  
28 other legal entity not named as a Party to this action.

~~2.9~~2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a ~~party to this action~~Party and have appeared in this action on behalf of that ~~party~~Party or are affiliated with a law firm which has appeared on behalf of that ~~party~~Party.

~~2.10~~2.13 Party: any party to this action, ~~including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).~~

~~2.11~~2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

~~2.12~~2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

~~2.13~~2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

~~2.14~~2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained

the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a ~~court~~Court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; ~~and~~or (2) entry of a final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. ~~The~~To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other ~~parties~~Parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
2 so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,  
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
6 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
8 material on a page qualifies for protection and if practicable to do so, the Producing Party also  
9 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
10 margins) and must specify, for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material  
13 it would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” ~~legend~~ or “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected  
20 Material. If only a portion or portions of the material on a page qualifies for protection, the  
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
22 markings in the margins) and must specify, for each portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
24 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
25 other proceeding, all protected testimony- and specify the level of protection being asserted. When  
26 it is impractical to identify separately each portion of testimony that is entitled to protection and it  
27 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
28 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right

1 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
2 sought and to specify the level of protection being asserted. Only those portions of the testimony  
3 that are appropriately designated for protection within the 21 days shall be covered by the  
4 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at  
5 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
6 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
7 ATTORNEYS’ EYES ONLY”.

8 Parties shall give the other Parties reasonable notice (a minimum of two business days) if  
9 they reasonably expect a deposition, hearing or other proceeding to include Protected Material so  
10 that the other Parties can ensure that only authorized individuals who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The  
12 use of a document as an exhibit at a deposition shall not in any way affect its designation as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

14 Transcripts containing Protected Material shall have an obvious legend on the title page  
15 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
16 pages (including line numbers as appropriate) that have been designated as Protected Material and  
17 the level of protection being asserted by the Designating Party. The Designating Party shall inform  
18 the court reporter of these requirements. Any transcript that is prepared before the expiration of a  
19 21-day period for designation shall be treated during that period as if it had been designated  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
21 agreed. After the expiration of that period, the transcript shall be treated only as actually  
22 designated.

23 (c) for information produced in some form other than documentary and for any  
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
25 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”  
26 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of  
27 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
28 identify the protected portion(s) and specify the level of protection being asserted.

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the Designating  
3 Party's right to secure protection under this Order for such material. Upon timely correction of  
4 a designation, the Receiving Party must make reasonable efforts to assure that the material is  
5 treated in accordance with the provisions of this Order.

6     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1     Timing of Challenges. Any Party ~~or Non-Party~~ may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13          6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
14 process by providing written notice of each designation it is challenging and describing the  
15 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
16 written notice must recite that the challenge to confidentiality is being made in accordance with  
17 this specific paragraph of the Protective Order. The ~~parties~~Parties shall attempt to resolve each  
18 challenge in good faith and must begin the process by conferring directly (in voice to voice  
19 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
20 of notice. Lead counsel must actively engage in discussion of the dispute, though others may  
21 participate in the conference to assist lead counsel. In conferring, the Challenging Party must  
22 explain the basis for its belief that the confidentiality designation was not proper and must give  
23 the Designating Party an opportunity to review the designated material, to reconsider the  
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
25 designation. A Challenging Party may proceed to the next stage of the challenge process only if  
26 it has engaged in this meet and confer process first or establishes that the Designating Party is  
27 unwilling to participate in the meet and confer process in a timely manner.

28          6.3     Judicial Intervention. If the Parties cannot resolve a challenge without

~~court~~Court intervention, the Designating Party shall ~~file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.~~ Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph initiate the drafting of a joint letter to the Court, and shall send the draft to the Challenging Party within 5 court days after the conference of lead counsel. The Challenging Party shall have 5 court days to draft its sections of the joint letter, and the Designating Party shall then file the joint letter with the Court. Failure by the Designating Party to ~~make such a motion including the required declaration within 21 days (or 14 days, if applicable)~~ provide said draft of the letter (with all subparts) to the Challenging Party, within 21 days after the conference of lead counsel shall automatically waive the confidentiality designation for each challenged designation. ~~In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other ~~parties~~Parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the ~~Producing~~Designating Party's designation until the ~~court~~Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for



1 prosecuting, defending, or attempting to settle this litigation, and shall not be used for any  
2 business purpose, in connection with any other legal proceeding, or directly or indirectly for  
3 any other purpose whatsoever. Such Protected Material may be disclosed only to the categories  
4 of persons and under the conditions described in this Order.<sup>1</sup> When the litigation has been  
5 terminated, a Receiving Party must comply with the provisions of section ~~13~~15 below (FINAL  
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and in  
8 a secure manner that ensures that access is limited to the persons authorized under this Order.  
9 Protected Material shall not be copied or otherwise reproduced by a Receiving party, except for  
10 transmission to qualified recipients, without the written permission of the Producing Party or by  
11 further order of the Court.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
13 ordered by the ~~court~~Court or permitted in writing by the Designating Party, a Receiving Party  
14 may disclose any information or item designated “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
17 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
18 Bound” that is attached hereto as Exhibit A;

19 (b) ~~the officers, directors, and employees (including~~ House Counsel) of the  
20 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom  
23 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
24

---

25 <sup>1</sup> In the event a Non-Party witness is authorized to receive Protected Material that is to be used  
26 during his/her deposition but is represented by an attorney not authorized under this Order to  
27 receive such Protected Material, the attorney must provide prior to commencement of the  
28 deposition an executed “Acknowledgment and Agreement to Be Bound” in the form attached  
hereto as Exhibit A. In the event such attorney declines to sign the “Acknowledgment and  
Agreement to Be Bound” prior to the examination, the Parties, by their attorneys, shall jointly seek  
a protective order from the Court prohibiting the attorney from disclosing Protected Material in  
order for the deposition to proceed.

1 and Agreement to Be Bound” (Exhibit A);

2 (d) the ~~court~~Court and its personnel;

3 (e) ~~court~~ stenographic reporters, videographers and/or their staff, ~~professional~~  
4 ~~jury or trial consultants, mock jurors,~~ and Professional Vendors to whom disclosure is reasonably  
5 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
6 Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom disclosure is  
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
9 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the ~~court~~Court. Pages  
10 of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must  
11 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
12 under this Stipulated Protective Order-;

13 (g) the author or recipient of a document containing the information or a  
14 custodian or other person who otherwise possessed or personally knows the information; or

15 (h) Plaintiff, provided he has signed the “Acknowledgment and Agreement to  
16 Be Bound” (Exhibit A).

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
18 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the  
19 Designating Party, a Receiving Party may disclose any information or item designated  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
23 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
24 Bound” that is attached hereto as Exhibit A;

25 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
26 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
27 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(a)(2), below,  
28 have been followed;

1                   (c)     the Court and its personnel;  
2                   (d)     stenographic reporters, videographers and their respective staff, professional  
3 jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for  
4 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
5 A); and

6                   (ge)    the author or recipient of a document containing the information or a  
7 custodian or other person who otherwise possessed or ~~knew~~personally knows the information.

8                   7.4     This section intentionally left blank.

9                   7.5     Procedures for Approving or Objecting to Disclosure of “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or Items to Experts.

11                  (a)     (1) Purposefully left blank.

12                  (b)     A Party that makes a request and provides the information specified in the  
13 preceding respective paragraphs may disclose the subject Protected Material to the identified  
14 Expert unless, within 14 days of delivering the request, the Party receives a written objection from  
15 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

16                  (c)     A Party that receives a timely written objection must meet and confer with  
17 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
18 agreement within seven days of the written objection. If no agreement is reached, the Party  
19 seeking to make the disclosure to the Expert may initiate the drafting of a joint letter to the Court,  
20 pursuant to the Discovery Dispute Guidelines, seeking permission from the Court to do so. Any  
21 such motion must describe the circumstances with specificity, set forth in detail the reasons why  
22 the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure  
23 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
24 any such motion must be accompanied by a competent declaration describing the parties’ efforts to  
25 resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
26 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
27 approve the disclosure.

28                  (d)     In any such proceeding, the Party opposing disclosure to the Expert shall

1 bear the burden of proving that the risk of harm that the disclosure would entail (under the  
2 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
3 its Expert.

4 8. This section intentionally left blank.

5 9. This section intentionally left blank.

6 810. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
7 LITIGATION

8 If a Party is served with a subpoena ~~or~~ issued by a court, arbitral, administrative, or  
9 legislative body, or with a court order issued in other litigation that compels disclosure of any  
10 information or items designated in this action as "CONFIDENTIAL<sup>2</sup>" or "HIGHLY  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall  
13 include a copy of the subpoena or court order;

14 (b) promptly notify in writing the ~~party~~ person who caused the subpoena or  
15 order to issue in the other litigation that some or all of the material covered by the subpoena or  
16 order is subject to this Protective Order. Such notification shall include a copy of this Stipulated  
17 Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
19 the Designating Party whose Protected Material may be affected.<sup>2</sup>

20 If the Designating Party timely<sup>3</sup> seeks a protective order, the Party served with the  
21 subpoena or court order shall not produce any information designated in this action as  
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a  
23 determination by the court from which the subpoena or order issued, unless the Party has obtained  
24 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
25 seeking protection in that court of its confidential material – and nothing in these provisions

26 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
28 confidentiality interests in the court from which the subpoena or order issued.

<sup>3</sup> The Designating Party shall have at least 14 days from the service of the notification pursuant to  
Section 10(a) to seek a protective order.

should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

911. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL-," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this ~~court~~Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely objects or seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the ~~court~~Court.<sup>4</sup> Absent a ~~court~~Court order to the contrary,

---

<sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected  
2 Material.

3 ~~10~~12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
5 Material to any person or in any circumstance not authorized under this Stipulated Protective  
6 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
7 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
8 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
9 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 ~~11~~13. ~~INADVERTENT~~ PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
12 MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain ~~inadvertently~~  
14 produced material is subject to a claim of privilege or other protection, the obligations of the  
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
16 provision is not intended to modify whatever procedure may be established in an e-discovery order  
17 that provides for production without prior privilege review. If information is produced in  
18 discovery that is subject to a claim of privilege or of protection as trial-preparation material, the  
19 party making the claim may notify any party that received the information of the claim and the  
20 basis for it. After being notified, a party must promptly return or destroy the specified information  
21 and any copies it has and may not sequester, use or disclose the information until the claim is  
22 resolved. Pursuant to Federal Rule of Evidence 502(d) and (e), ~~insofar as the parties reach an~~  
23 ~~agreement on the effect of disclosure of a communication or information covered by the attorney-~~  
24 ~~client~~ the production of a privileged or work-product-protected document is not a waiver of  
25 privilege or work-product protection, the parties may incorporate their agreement in the stipulated  
26 ~~protective order submitted to the court.~~ from discovery in this case or in any other federal or state  
27 proceeding. For example, the mere production of privileged or work-product-protected documents  
28 in this case as part of a mass production is not itself a waiver in this case or any other federal or

1 state proceeding.

2 ~~12.14.~~ MISCELLANEOUS

3 ~~12.14.1~~ 14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
4 person to seek its modification by ~~the court in the future.~~ agreement with other Parties or by  
5 applying to the Court if such agreement cannot be reached. Furthermore, without application to  
6 the Court, any party that is a beneficiary of the protections of this Order may enter a written  
7 agreement releasing any other party hereto from one or more requirements of this Order even if  
8 the conduct subject to the release would otherwise violate the terms herein.

9 ~~12.2~~ 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
11 producing any information or item on any ground not addressed in this Stipulated Protective  
12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
13 the material covered by this Protective Order.

14 14.3 No Agreement Concerning Discoverability. The identification or agreed upon  
15 treatment of certain types of Disclosure and Discovery Material does not reflect agreement by  
16 the Parties that the disclosure of such categories of Disclosure and Discovery Material is  
17 required or appropriate in this action. The Parties reserve the right to argue that any particular  
18 category of Disclosure and Discovery Material should not be produced.

19 14.4 This section intentionally left blank.

20 ~~12.3~~ 14.5 Filing Protected Material. Without written permission from the Designating  
21 Party or a ~~court~~ Court order secured after appropriate notice to all interested persons, a Party  
22 may not file in the public record in this action any Protected Material. A Party that seeks to file  
23 under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material  
24 may only be filed under seal pursuant to a ~~court~~ Court order authorizing the sealing of the  
25 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue  
26 only upon a request establishing that the Protected Material at issue is privileged, protectable as  
27 a trade secret, or otherwise entitled to protection under the law. If a Receiving ~~Party's~~ Party's  
28 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(~~de~~) is denied by

the court, then the Receiving Party may file the ~~information~~Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the ~~court~~Court.

14.6 This section intentionally left blank.

14.7 No Limitation on Legal Representation. Nothing in this Order shall preclude or impede Outside Counsel of Record's ability to communicate with or advise their client in connection with this litigation based on such counsel's review and evaluation of Protected Material, provided however that such communications or advice shall not disclose or reveal the substance of content of any material designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" other than as permitted under this Order.

14.8 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of this Stipulated Protective Order as of the date counsel for such party executes this Stipulated Protective Order, even if prior to entry of this Order by the Court.

~~13~~15. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material upon request of the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. ~~Whether~~If requested, whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, ~~motion papers, trial, deposition, and hearing transcripts, legal memoranda~~motions and trial briefs (including all supporting and opposing papers and exhibits thereto), correspondence, ~~deposition and trial exhibits, expert reports,~~written discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence



1 at any hearing or trial, and their attorney work product, ~~and consultant and expert work product,~~  
2 ~~even if such materials contain Protected Material~~ which refers or is related to any  
3 CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information for archival  
4 purposes only. Any such archival copies that contain or constitute Protected Material remain  
5 subject to this Protective Order as set forth in Section 4 (DURATION).

6 16. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION

7 The United States District Court for the Northern District of California is responsible for  
8 the interpretation and enforcement of this Order. After final disposition of this litigation, the  
9 provisions of this Order shall continue to be binding except with respect to that Disclosure or  
10 Discovery Material that become a matter of public record. This Court retains and shall have  
11 continuing jurisdiction over the Parties and recipients of the Protected Material for enforcement of  
12 the provision of this Order following final disposition of this litigation. All disputes concerning  
13 Protected Material produced under the protection of this Order shall be resolved by the United  
14 States District Court for the Northern District of California.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16  
17 ~~DATED:~~ \_\_\_\_\_

18 DATED: June 24, 2019 \_\_\_\_\_ /s/ \_\_\_\_\_  
19 Attorneys for Plaintiff

20 DATED: June 24, 2019 \_\_\_\_\_ /s/ \_\_\_\_\_

21 ~~DATED:~~ \_\_\_\_\_

22 Attorneys for Defendant

23  
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25  
26 ~~DATED:~~ \_\_\_\_\_

27 DATED: \_\_\_\_\_  
28 HONORABLE BETH LABSON FREEMAN  
United States District ~~Magistrate~~ Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
type full address], declare under penalty of perjury that I have read in its entirety and understand  
the Stipulated Protective Order that was issued by the United States District Court for the Northern  
District of California on [date] in the case of \_\_\_\_\_ ~~[insert formal name of the case and  
the number and initials assigned to it by the court]~~ Roley v. Google, LLC, Case No. 5:18-cv-  
7537-BLF. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
manner any information or item that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby ~~appoint~~ \_\_\_\_\_ appoint [print or type full name]  
of \_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

~~Date:~~ \_\_\_\_\_

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

[signature]

Signature: \_\_\_\_\_